

January 2005

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 2

Jurisdiction, Transfer, and Venue

2.13 Jurisdiction and Authority Over Adults

Replace the quotation of MCL 712A.6 at the top of page 34 with the following quotation:

“The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A of the revised judiciary act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082,* and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.”

*MCL 600.1060 to 600.1082 govern drug treatment courts. See the new Section 10.10, below, for information on drug treatment courts.

CHAPTER 4

Diversion and Consent Calendar Procedures

4.3 Requirements of the Crime Victim's Rights Act

D. Required Procedures Before Removing a Case From the Adjudicative Process

On page 77, insert the following text immediately before subsection (E):

Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). If an offender is admitted to a drug treatment court, adjudication of his or her offense may be deferred. MCL 600.1070(1)(a)–(c).

In addition to the rights conferred upon a victim by the Crime Victim's Rights Act, a drug treatment court must permit a victim and others to submit a written statement to the court regarding whether a juvenile should be admitted into a drug treatment court. MCL 600.1068(4)* states:

“In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

See the January 2005 update that added Section 10.10, Juvenile Drug Treatment Court, for more information on drug treatment courts.

*Effective
January 1,
2005. 2004 PA
224.

CHAPTER 8

Pleas of Admission or No Contest in Delinquency Proceedings

8.7 Taking Pleas Under Advisement and Plea Withdrawal

On page 191, insert the following text after the quote of MCR 3.941(D):

Withdrawal of plea after denial of admittance into drug treatment court.

Effective January 1, 2005, 2004 PA 224 created drug treatment courts.* If a juvenile is denied admission to a drug treatment court after he or she has admitted responsibility and taken the other necessary steps for admission, the juvenile is entitled to withdraw his or her admission of responsibility. MCL 600.1068(5) states:

“An individual who has waived his or her right to a preliminary examination and has pled guilty or, in the case of a juvenile, has admitted responsibility, as part of his or her application to a drug treatment court and who is not admitted to a drug treatment court, shall be permitted to withdraw his or her plea and is entitled to a preliminary examination or, in the case of a juvenile, shall be permitted to withdraw his or her admission of responsibility.”

*See the January 2005 update that added Section 10.10 for more information on drug treatment courts.

CHAPTER 10

Juvenile Dispositions

10.7 Victim Impact Statements

Insert the following text on page 219 immediately before Section 10.8:

*Effective
January 1,
2005. 2004 PA
224.

Written statements regarding admission of juvenile to drug treatment court. In addition to the rights conferred upon a victim by the Crime Victim's Rights Act, a drug treatment court must permit a victim and others to submit a written statement to the court regarding whether a juvenile should be admitted into a drug treatment court. MCL 600.1068(4)* states:

“In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

See the January 2005 update that added Section 10.10, Juvenile Drug Treatment Court, for more information on drug treatment courts.

CHAPTER 10

Juvenile Dispositions

10.9 Dispositional Options Available to Court

C. In-Home Probation

Replace the second sentence of the first paragraph on page 221 with the following text:

As used in MCL 712A.18(1)(b),* “related” means:

“an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. A child may be placed with the parent of a man whom the court has found probable cause to believe is the putative father if there is no man with legally established rights to the child. This placement of the child with the parent of a man whom the court has found probable cause to believe is the putative father is for the purposes of placement only and is not to be construed as a finding of paternity or to confer legal standing.”

Insert the following text on page 221 at the end of the second paragraph:

Effective January 1, 2005, MCL 712A.18(1)(b) was amended* to allow the court to order a juvenile to participate in a drug treatment court as a term of probation. Please see the January 2005 update that added Section 10.10, Juvenile Drug Treatment Court, for more information on drug treatment courts.

*Effective
December 28,
2004. 2004 PA
475.

*2004 PA 221.

CHAPTER 10

Juvenile Dispositions

10.9 Dispositional Options Available to Court

L. Orders Directed to Parents and Other Adults

On page 230, before the paragraph beginning “**Notice and hearing requirements**,” insert the following text:

Order to parent or guardian of a juvenile admitted to drug treatment court. Effective January 1, 2005, 2004 PA 224 created drug treatment courts. If a juvenile is admitted to a drug treatment court, the court also has jurisdiction over the parent or guardian of the juvenile. MCL 712A.6* states:

*Effective
January 1,
2005. 2004 PA
221.

*MCL
600.1060 to
600.1082
govern drug
treatment
courts.

“The court has jurisdiction over adults as provided in this chapter and as provided in . . . MCL 600.1060 to 600.1082,* and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.”

*Effective
January 1,
2005. 2004 PA
224.

MCL 600.1070(2)* states, in part:

“In the case of a juvenile participant, the court may obtain jurisdiction over any parents or guardians of the juvenile in order to assist in ensuring the juvenile’s continued participation and successful completion of the drug treatment court, and may issue and enforce any appropriate and necessary order regarding the parent or guardian of a juvenile participant.”

CHAPTER 10

Juvenile Dispositions

On page 231, insert the following new section and renumber the remaining sections accordingly:

10.10 Juvenile Drug Treatment Court

Effective January 1, 2005,* the Family Division may adopt a drug treatment court under MCL 600.1060 to MCL 600.1082 of the Revised Judicature Act. MCL 600.1062(2). This legislation also allows district and circuit courts to establish drug treatment courts. MCL 600.1062(1). Juvenile drug treatment courts are subject to the same requirements and procedures as adult drug treatment courts except as specifically provided in MCL 600.1060 to MCL 600.1082. A juvenile court may order, as a condition of probation, that a juvenile participate in a drug treatment court. MCL 712A.18(1)(b). If a juvenile is admitted into a drug treatment court, the juvenile's disposition may be deferred and, in some cases, dismissed upon successful completion of drug treatment court.

*2004 PA 224.

A. Admission to Drug Treatment Court

"Each drug treatment court shall determine whether an individual may be admitted to the drug treatment court." MCL 600.1064(1). However, a violent offender is not eligible for drug treatment court. *Id.* A "violent offender" is a person who meets either of the following criteria:

"(i) Is currently charged with or has pled guilty to, or, if a juvenile, is currently alleged to have committed or has admitted responsibility for, an offense involving the death of or a serious bodily injury to any individual, or the carrying, possessing, or use of a firearm or other dangerous weapon by that individual, whether or not any of these circumstances are an element of the offense, or is criminal sexual conduct of any degree.

"(ii) Has 1 or more prior convictions for, or, if a juvenile, has 1 or more prior findings of responsibility for, a felony involving the use or attempted use of force against another individual with the intent to cause death or serious bodily harm." MCL 600.1060(g)(i)–(ii).

No individual has a right to be admitted into a drug treatment court. MCL 600.1064(1).

In order to be admitted to drug treatment court, the juvenile must cooperate with and complete a preadmissions screening and evaluation assessment and must agree to cooperate with any future evaluation assessment as directed by the court. MCL 600.1064(3). MCL 600.1064(3) requires that all prescreening

assessments contain specific information. MCL 600.1064(3)(e) requires a juvenile offender's evaluation to contain "an assessment of the family situation including, as much as practicable, a comparable review of any guardians or parents."

If a juvenile who seeks admission to drug treatment court is charged with a criminal offense, the juvenile's admission must also comply with the conditions in MCL 600.1068, which states, in part:

"(1) If the individual being considered for admission to a drug treatment court is charged in a criminal case or, in the case of a juvenile, is alleged to have engaged in activity that would constitute a criminal act if committed by an adult, his or her admission is subject to all of the following conditions:

"(a) The offense or offenses allegedly committed by the individual must be related to the abuse, illegal use, or possession of a controlled substance or alcohol.

"(b) The individual, if an adult, must plead guilty to the charge or charges on the record. The individual, if a juvenile, must admit responsibility for the violation or violations that he or she is accused of having committed.

"(c) The individual must waive, in writing, the right to a speedy trial, the right to representation at drug treatment court review hearings by an attorney, and, with the agreement of the prosecutor, the right to a preliminary examination.

"(d) The individual must sign a written agreement to participate in the drug treatment court."

The prosecutor must approve of the juvenile's admission into the drug treatment court in conformity with the memorandum of understanding establishing the drug treatment court under MCL 600.1062. MCL 600.1068(2).

Traffic offenses. "An individual shall not be admitted to, or remain in, a drug treatment court pursuant to an agreement that would permit a discharge or dismissal of a traffic offense upon successful completion of the drug treatment court program." MCL 600.1068(3).

Victim and community statements. "In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written

statement to the court regarding the advisability of admitting the individual into the drug treatment court.” MCL 600.1068(4).

B. Making a Record Prior to Admission to Drug Court

Before a juvenile is admitted into a drug treatment court, the court must make certain findings. MCL 600.1066. MCL 600.1066 states that “the court shall find on the record, or place a statement in the court file pertaining to, all of the following:

“(a) The individual is dependent upon or abusing drugs or alcohol and is an appropriate candidate for participation in the drug treatment court.

“(b) The individual understands the consequences of entering the drug treatment court and agrees to comply with all court orders and requirements of the court’s program and treatment providers.

“(c) The individual is not an unwarranted or substantial risk to the safety of the public or any individual, based upon the screening and assessment or other information presented to the court.

“(d) The individual is not a violent offender.

“(e) The individual has completed a preadmission screening and evaluation assessment under [MCL 600.1064(3)] and has agreed to cooperate with any future evaluation assessment as directed by the drug treatment court.

“(f) The individual meets the requirements, if applicable, under . . . MCL 333.7411, . . . MCL 762.11, . . . MCL 769.4a, . . . MCL 771.1, . . . MCL 750.350a, or . . . MCL 750.430.*

“(g) The terms, conditions, and the duration of the agreement between the parties, especially as to the outcome for the participant of the drug treatment court upon successful completion by the participant or termination of participation.”

*These statutes are deferral statutes for specific crimes.

C. Accepting Plea

Once the court admits the juvenile into the drug treatment court, the court shall accept the juvenile’s admission of responsibility. The court may then either proceed to sentencing and include drug treatment court as a part of probation, or the court may defer sentencing until successful completion of drug treatment court. MCL 600.1070 states, in part:

“(1) Upon admitting an individual into a drug treatment court, all of the following apply:

“(a) For an individual who is admitted to a drug treatment court based upon having criminal charges currently filed against him or her, the court shall accept the plea of guilty or, in the case of a juvenile, the admission of responsibility.

“(b) For an individual who pled guilty to, or admitted responsibility for, criminal charges for which he or she was admitted into the drug treatment court, the court shall do either of the following:

(i) In the case of an individual who pled guilty to an offense that is not a traffic offense and who may be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the drug treatment court program, the court shall not enter a judgment of guilt or, in the case of a juvenile, shall not enter an adjudication of responsibility.

(ii) In the case of an individual who pled guilty to a traffic offense or who pled guilty to an offense but may not be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the drug treatment court program, the court shall enter a judgment of guilt or, in the case of a juvenile, shall enter an adjudication of responsibility.

“(c) Pursuant to the agreement with the individual and the prosecutor, the court may either defer further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, or proceed to sentencing, as applicable in that case pursuant to that agreement, and place the individual on probation or other court supervision in the drug treatment court program with terms and conditions according to the agreement and as deemed necessary by the court.”

D. Admission to Drug Treatment Court Denied—Withdrawal of Plea

If a juvenile is denied admission to a drug treatment court after he or she has admitted responsibility and taken the other necessary steps for admission, the juvenile is entitled to withdraw his or her admission of responsibility. MCL 600.1068(5) states:

“An individual who has waived his or her right to a preliminary examination and has pled guilty or, in the case of a juvenile, has admitted responsibility, as part of his or her application to a drug treatment court and who is not admitted to a drug treatment court,

shall be permitted to withdraw his or her plea and is entitled to a preliminary examination or, in the case of a juvenile, shall be permitted to withdraw his or her admission of responsibility.”

E. Court’s Continuing Jurisdiction

MCL 600.1070(2) states:

“The court shall maintain jurisdiction over the drug treatment court participant as provided in this act until final disposition of the case, but not longer than the probation period fixed under section 2 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.2. In the case of a juvenile participant, the court may obtain jurisdiction over any parents or guardians of the juvenile in order to assist in ensuring the juvenile’s continued participation and successful completion of the drug treatment court, and may issue and enforce any appropriate and necessary order regarding the parent or guardian of a juvenile participant.”

MCL 771.2(1) fixes a maximum two-year probation period for misdemeanors and a five-year maximum probation period for felonies. For stalking, a court may place an offender on probation for not more than five years; for aggravated stalking, a court may order probation for any term of years but not less than five years. MCL 771.2a(1)–(2). MCL 712A.2a, discussed in Section 14.1, governs a court’s continuing jurisdiction in cases under the Juvenile Code.

F. Successful Completion of Drug Treatment Court

In order to continue participating in and successfully complete a drug treatment court program, the juvenile must comply with all of the following:

- ◆ Pay all court ordered fines and costs, including minimum state costs.
- ◆ Pay the drug treatment court fee allowed under MCL 600.1070(4).
- ◆ Pay all court ordered restitution.
- ◆ Pay all crime victims rights assessments under MCL 780.905.*
- ◆ Comply with all court orders.

MCL 600.1074(1)(a)–(e).

The court is required to order a participant to pay all fines, costs, the fee, restitution, and assessments described above, and to pay all or any part of the costs of the treatment and the drug treatment court program services. However, the court may waive all or part of those fines, the fee, or costs of treatment if the court determines the payment would be a “substantial hardship for the individual or would interfere with the individual’s substance

*See Section 10.13 (renumbered with this update as 10.14) for more information on assessments under MCL 780.905.

abuse treatment.” MCL 600.1074(3). There is no provision for waiving payment of restitution or the crime victims rights assessment.

The court shall find on the record or place a written statement in the court file when a juvenile completes the drug treatment court program. The statement must indicate whether the juvenile successfully completed the program, or whether he or she was terminated from the program along with the reason for termination. MCL 600.1076(1).

When a juvenile successfully completes drug treatment court, the court must comply with the agreement that was made with the participant upon entering drug treatment court. MCL 600.1076(2) states:

“For a participant who successfully completes probation or other court supervision and whose proceedings were deferred or who was sentenced pursuant to [MCL 600.1070], the court shall comply with the agreement made with the participant upon admission into the drug treatment court, or the agreement as it was altered after admission by the court with approval of the participant and the prosecutor for that jurisdiction as provided in subsections (3) to (8).”

The court, with agreement of the prosecutor, and in conformity with the terms and conditions of the memorandum of understanding under MCL 600.1062, may discharge and dismiss the proceedings against a juvenile who meets all of the following criteria:

“(a) The individual has participated in a drug treatment court for the first time.

“(b) The individual has successfully completed the terms and conditions of the drug treatment court program.

“(c) The individual is not required by law to be sentenced to a correctional facility for the crimes to which he or she has pled guilty.

“(d) The individual is not currently charged with and has not pled guilty to a traffic offense.

“(e) The individual has not previously been subject to more than 1 of any of the following:

“(i) Assignment to the status of youthful trainee under . . . MCL 762.11.

“(ii) The dismissal of criminal proceedings against him or her under . . . MCL 333.7411, . . . MCL 769.4a, . . . MCL 750.350a, . . . MCL 750.430.”* MCL 600.1076(4).

*These statutes govern deferred proceedings for specific crimes.

A discharge and dismissal under this subsection shall be without an adjudication of responsibility and are not a finding of responsibility for purposes of MCL 600.1076 or for purposes of disqualifications or disabilities imposed by law upon a finding of responsibility. MCL 600.1076(6).

The court may only enter one discharge and dismissal under MCL 600.1076(4) for an individual. MCL 600.1076(6).

The court shall send a record of the discharge and dismissal to the criminal justice information center of the state police. The state police shall enter that information into the law enforcement information network (LIEN) with an indication of participation by the individual in a drug treatment court. *Id.*

G. Adjudication and Disposition

Except as provided in subsection (F), above, if a juvenile successfully completed probation or other supervision, the court is required to comply with MCL 600.1076(7). MCL 600.1076(7) states:

“(7) Except as provided in subsection . . . (4), . . . if an individual has successfully completed probation or other court supervision, the court shall do the following:

“(a) If the court has not already entered an adjudication of guilt or responsibility, enter an adjudication of guilt or, in the case of a juvenile, enter a finding or adjudication of responsibility.

“(b) If the court has not already sentenced the individual, proceed to sentencing or, in the case of a juvenile, disposition pursuant to the agreement.

“(c) Send a record of the conviction and sentence or the finding or adjudication of responsibility and disposition to the criminal justice information center of the department of state police. The department of state police shall enter that information into the law enforcement information network with an indication of successful participation by the individual in a drug treatment court.”

H. Termination of Participation in Drug Treatment Court

If a drug treatment court participant is accused of a new crime, a judge must “consider whether to terminate the participant’s participation in the drug treatment program in conformity with the memorandum of understanding under [MCL 600.1062].” MCL 600.1074(2). If a drug treatment court participant is convicted of a felony offense that occurred after the participant’s admission into drug treatment court, the judge shall terminate the participant’s participation in the program. *Id.*

Upon a participant's termination from drug treatment court, the court shall find on the record or place a written statement in the court file indicating that the participant's participation was terminated and the reason for the termination. MCL 600.1076(1).

MCL 600.1076(8) states:

“(8) For a participant whose participation is terminated or who fails to successfully complete the drug treatment court program, the court shall enter an adjudication of guilt, or, in the case of a juvenile, a finding of responsibility, if the entering of guilt or adjudication of responsibility was deferred pursuant to [MCL 600.1070], and shall then proceed to sentencing or disposition of the individual for the original charges to which the individual pled guilty or, if a juvenile, to which the juvenile admitted responsibility prior to admission to the drug treatment court. Upon sentencing or disposition of the individual, the court shall send a record of that sentence or disposition and the individual's unsuccessful participation in the drug treatment court to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the law enforcement information network, with an indication that the individual unsuccessfully participated in a drug treatment court.”

CHAPTER 10

Juvenile Dispositions

10.13 Crime Victim's Rights Fund Assessment

A. Assessments of Convicted and Adjudicated Offenders

Insert the following text on page 254 immediately before subsection (B):

“In order to continue to participate in and successfully complete a drug treatment court program,” an offender must pay all crime victims rights assessments. MCL 600.1074(1)(d).

CHAPTER 14

Review of Juvenile Dispositions

14.5 Dispositional Review Hearings for Juveniles Placed in Out-of-Home Care

Delete the first two paragraphs on page 305 and insert the following text:

*Effective
December 28,
2004.

MCR 3.945(A)(2)(a) states that “[i]f the juvenile is placed in out-of-home care, the court must hold dispositional review hearings no later than every 182 days after the initial disposition, as provided in MCL 712A.19(2).” 2004 PA 477* eliminated the current language in MCL 712A.19(2) governing dispositional review hearings for juveniles placed in foster care. MCL 712A.19(2) now governs children placed in their own homes. MCL 712A.19(2) states in relevant part:

“ . . . if a child subject to the jurisdiction of the court remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the jurisdiction of the court. After the first year that the child is subject to the jurisdiction of the court, a review hearing shall be held no later than 182 days from the immediately preceding review hearing before the end of that first year and no later than every 182 days from each preceding review hearing thereafter until the case is dismissed. . . . ”

CHAPTER 14

Review of Juvenile Dispositions

14.9 Recording Dispositional Review Hearings

Effective December 28, 2004, 2004 PA 477 amended MCL 712A.19. Delete the last sentence of this section. MCL 712A.19(2) no longer provides for a rehearing that must be recorded stenographically.

CHAPTER 23

Selected Issues Regarding Imposition of Adult Sentence

23.4 Alternative Sentences for Major Controlled Substance Offenses

On page 476, after the last sentence insert the following text:

* 2004 PA 219.

Effective January 1, 2005,* the court may also require a probationer to participate in a drug treatment court. MCL 771.3(2)(g).

CHAPTER 24

Appeals

24.10 Appointment of Appellate Counsel

Insert the following text after the last paragraph on page 486:

The United States Supreme Court reversed the Sixth Circuit's decision in *Tesmer v Granholm** but did not address the constitutionality of MCL 770.3a because the Court concluded that the plaintiffs lacked standing to challenge Michigan's procedure on behalf of "hypothetical indigents." *Kowalski v Tesmer*, 543 US ____ (2004). Consequently, the controlling rule in Michigan is that set forth in *People v Bulger*, 462 Mich 495 (2000)—Michigan's Constitution does not require that indigent defendants be appointed counsel to pursue discretionary appeals.

*See the August 2003 update to page 486 for a discussion of the Sixth Circuit's decision in *Tesmer v Granholm*.

CHAPTER 25

Recordkeeping & Reporting Requirements

25.2 Access to Family Division Records and Confidential Files

After the first paragraph on page 492, insert the following text:

If a juvenile successfully completes participation in drug treatment court and the proceedings are discharged and dismissed, all records regarding the juvenile's participation are closed to public inspection and are exempt from disclosure under the Freedom of Information Act. MCL 600.1076(6).